



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8073220

Date: MAY 27, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an animal health and welfare specialist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement of either a one-time achievement or at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained

acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner has served as [redacted] for the [redacted] in Spain, and intends to continue to work in the animal welfare field in the United States. She earned a degree in veterinary medicine from [redacted] University in [redacted] in 1989, and a Master of Science degree in animal health from the University of [redacted] 1992.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles in her field and her leading role for an organization having a distinguished reputation. On appeal, the Petitioner asserts that she also meets four additional evidentiary criteria.

After review of the record, we agree with the Director that the Petitioner meets the two criteria he identified. Specifically, she submitted evidence that an article she co-authored appeared in a report, [redacted] and another article appeared in the professional journal *Medicina Veterinaria*. Also, several reference letters and other evidence confirm that she served as the [redacted] or department for the government of the [redacted] for several years.

However, we disagree with the Director regarding the evidence of the Petitioner’s participation as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv). The Director acknowledged the evidence of the Petitioner’s work on the Technical Evaluation Committee for the Director General of Agriculture, but concluded that she had selected due to her official position rather than “invited as a

judge or reviewer on the basis of his [*sic*] extraordinary ability in the field.” As noted by the Petitioner, the regulation does not require that an individual be selected as a judge on the basis of extraordinary ability. The evidence shows that as a member of this committee, she made decisions regarding funding applications submitted by local animal welfare groups. We therefore find that this evidence establishes that she meets this criterion, in addition to the two criteria mentioned above.

Because the Petitioner has established that she meets three criteria, she has satisfied the initial evidence requirements, and we need not consider whether she meets the additional criteria mentioned in her appeal brief. Rather, we will consider the evidence submitted in support of those criteria, together with the balance of the record, to determine whether she possesses the level of acclaim and standing in her field to establish her eligibility as an alien of extraordinary ability.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.¹ In this matter, we determine that the Petitioner has not shown her eligibility.

The Petitioner focuses on several aspects of her career as an animal welfare expert in asserting that she possesses the requisite sustained national or international acclaim in that field. She points to the evidence of her role in the drafting of the [REDACTED], which was enacted on [REDACTED] 2016, as well as the regulations regarding compliance with this law. In a letter from the Director General of Agriculture, Livestock and Food for the [REDACTED], submitted in response to the Director’s request for evidence (RFE), he notes that while “different institutions and personnel intervene” in the drafting of any law, the Petitioner’s role regarding this law “was the key one, for being the one determining and elaborating the draft.” The Director General had also noted in a letter submitted with the initial filing of the petition that she was also “in charge of directing the technical group for developing, drafting and writing the first draft of the regulations” for this law. In addition, the Petitioner’s role in drafting the law is supported by the minutes of a meeting of the Council of Animal Welfare held on [REDACTED] 2015, which indicated that the Petitioner presented the draft of the law at the meeting and received the comments of those participating.

Although this evidence demonstrates the Petitioner’s lead role in the creation and implementation of this law, the record does not establish that this work impacted the field or other animal welfare experts

¹ *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

at a national or international level. An undated article from the website of the newspaper *El Derecho* reports that the draft law includes the policy of [REDACTED] and expands upon an existing law enacted by the [REDACTED] in 1990. The article goes on to describe other aspects of the law, and notes that the [REDACTED] policy was already in place at the [REDACTED] and will now apply to all municipal shelters in the region. However, the article does not indicate that the Petitioner's work on this law has impacted the animal welfare field or other experts beyond the [REDACTED]

Similarly, reference letters in the record also describe the Petitioner's work on this law and its implementation as it relates to entities within the [REDACTED] of the [REDACTED], notes that as the head of [REDACTED] the Petitioner initiated the [REDACTED] policy and then incorporated it into her drafting of the pet protection law. Although [REDACTED] writes that the law "is undoubtedly a benchmark for animal protection in Spain," she does not elaborate on its impact on other Spanish communities or regions. Another reference letter, from [REDACTED] a veterinarian in the [REDACTED] area, states that the new law "is one of the most innovative legislations in Europe," but also does not elaborate on this statement or indicate that the Petitioner's work on this law has influenced animal welfare law or policy at the national or international level.

The Petitioner also asserts that the [REDACTED]'s receipt of the Animal Welfare Award from the [REDACTED] reflects national acclaim for her work on the Law on [REDACTED]. In responding to the Director's finding that the Petitioner did not receive the award, she refers to the district court decision in *Hristov v. Roark*, No. 09-CV-27312011 (E.D.N.Y. Sep. 20, 2011) and contends that it found that in lieu of actually receiving an award, an individual may meet this criterion by being "officially credited as being involved in the award-winning project." The court in that case found that our conclusions that that petitioner was not officially credited for his claimed role in a film, and had not received an award, were supported by the evidence. However, the court did not find that with respect to the criterion at 8 C.F.R. § 204.5(h)(3)(i), being officially credited on a film or other project which receives an award is an alternative for actually receiving an award.

We acknowledge that the Petitioner has demonstrated that she played an important part in the draft and implementation of the Law on [REDACTED] and that [REDACTED] awarded the Animal Welfare Award to the [REDACTED] based upon the enactment of this law. However, the evidence also indicates that [REDACTED] issued, as it had in the past, an award for individuals committed to animal welfare in 2016, and that it chose not to award the Petitioner in this way. The article in the record from [REDACTED]'s website which reports on its 2016 awards indicates that for the entity or organization award, it sought to recognize the collective work of several groups who contributed to the law, rather than any single individual. That article is also accompanied by a picture of the Petitioner holding the award, along with a group of several other individuals, none of whom are named in the caption below.

The Petitioner also submitted evidence of her service on other projects, including a study for the [REDACTED] for which she was selected to research European veterinary practice regarding the inspection of small

[redacted] and to assess those practices in Brazil. The record includes a report authored by the Petitioner as part of the [redacted] program between the European Union and Brazil. In addition, a reference letter from [redacted] General Secretary of [redacted], confirms her work as an expert on this project in 2016 and a similar study conducted in Israel in 2010. Although [redacted] writes that after visiting Brazilian [redacted] the Petitioner “proposed novel and original measures in order to increase the protection of animals at the time of [redacted]” she later indicates that the Petitioner’s work resulted in the adoption of European Union animal welfare standards. This latter statement, which conflicts with her earlier statement that the proposals were original, is supported by the report, which summarizes EU law and practices regarding the humane treatment of animals [redacted]. In addition, while the letter indicates that the Brazilian [redacted] that the Petitioner visited implemented many of her proposed measures, which allowed them to meet European Union standards “so that [redacted] from Brazil meets the necessary animal welfare requirements,” the record does not include documentary evidence that the Petitioner’s work resulted in changes to animal welfare law or policy in Brazil similar to that seen in the [redacted].

Other projects highlighted by the Petitioner on appeal include her assignment as an expert for the [redacted] carried out in Turkey. The evidence indicates that she was a speaker at a seminar concerning the welfare of [redacted] animals, and therefore further documents her expertise in the area of animal welfare. However, the Petitioner’s participation in this and other international projects described above does not demonstrate that her work garnered acclaim at the national or international level.

As noted above, the Director found that the Petitioner has served in a leading or critical role for organizations having a distinguished reputation. Although the Director did not identify the qualifying role or organization under the criterion at 8 C.F.R. § 204.5(h)(3)(viii), we note that her service as [redacted] [redacted] for the government of the [redacted] meets this criterion. The evidence indicates that in this role, in addition to leading the drafting and implementation of the [redacted] the Petitioner worked with community organizations and improved pet adoption rates in the region. On appeal, the Petitioner asserts that her position with this agency as well as her membership on the Council of Animal Welfare (CAW) and the Board of Directors of the Spanish Network for the Development of Alternatives to Animal Experimentation (REMA) are indicative of her position at the top of her field. Regarding CAW, the evidence indicates that it is “a consultative and advisory body” whose composition is regulated by order of the government of the [redacted] and that its members are appointed according to their title or position in local or regional government, education, professional associations and community organizations. Although the Petitioner’s activity in CAW and within the regional government reflects her standing as a top animal welfare expert in the [redacted] region, it does not establish that she is one of the small percentage at the top of her field on a national or international basis.

Turning to the Petitioner’s appointment to REMA, the minutes of a meeting reflect that she joined as an [redacted] and [redacted] of the activities of this organization, along with other government officials. It does not indicate that she was a member of the Board of Directors, nor does a letter from [redacted] the organization’s secretary. Further, although [redacted] states in his letter that “members are selected based on outstanding achievements in their field,” Article 23 of REMA’s statutes indicates that members are “entities or associations that have an interest

in the development of the purposes of the Association.” More importantly, while her selection as an [REDACTED] for REMA reflects its recognition of her position in the regional government and her expertise in the animal welfare field, the record lacks evidence regarding the organization’s reputation or standing within the field and any specific duties or projects that the Petitioner took on in this role.

As we noted above, the Petitioner’s participation as a judge of the work of other experts in her field is demonstrated by the appointment letter to the [REDACTED]

[REDACTED] and by minutes of that committee’s meetings.

The record also includes evidence of her participation in, and leadership of, the [REDACTED]

[REDACTED] In both roles, she evaluated contracts or bids relating to animal welfare services over the course of several years on behalf of the [REDACTED]. This evidence further demonstrates the influence the Petitioner has had in the field of animal welfare in the region for many years, but does not show that this influence extended beyond [REDACTED]’s borders.

The Petitioner notes on appeal that her career in animal welfare has spanned 28 years, during which she has played important roles for several organizations. The evidence demonstrates that during this career, she led the development and implementation of new animal welfare laws and policies in the [REDACTED]. [REDACTED] worked with and advised nonprofit organizations in the region, and successfully promoted the humane treatment and increased adoption of [REDACTED] animals. Although the evidence shows that the Petitioner made animal presentations in Israel and Turkey, and served as an advisor on European Union [REDACTED] policies in Brazil, the evidence does not demonstrate that these activities brought her acclaim in her field at the national or international level, or were indicative of a standing as one of the small percentage at the top of her field.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.